

SRMT FAMILY SUPPORT ACT CHANGES

DEFINITIONS:

Custodial Parent:

Old: *Custodial Parent" (CP) means the person who has primary physical placement of the child, whether by voluntary agreement or by Court Order. This is based on the presumption that the Noncustodial Parent (NCP) has the child 73-80 days per year (every other weekend, alternating holidays, and two weeks in the summer).*

New: *"Custodial Parent" (CP) means the person who has primary physical placement of the child (ren), whether by voluntary agreement or by Court Order. When a child (ren)'s placement is split evenly between parties meaning 50/50 then the parent who earns less income is deemed the custodial parent for child support purposes*

Guardian: Guardian" means anyone who has (a) child (ren) living with him/her for which he/she is providing financial support. The term can include any relative of the subject child (ren) even if there is no Court order establishing a guardianship

Process Server: means a person who in the regular course of his/her business serves the following, including but not limited to, writs, warrants, subpoenas or petitions. When service is effectuated outside the United States of America, the SRMT-CSEU shall utilize a Process Server who meets all of the requirements of a process server within his/her jurisdiction and any such service shall be deemed proper service under tribal law

Release of Information Authorization: is required for each party when child support is requested.

JURISDICTION

Old: The Saint Regis Mohawk Tribal Court shall have jurisdiction in paternity and child support matters when one or more of the following applies:

- When one of the parties or the child is an enrolled member or eligible to become a member of the Saint Regis Mohawk Tribe; or
- When one or more of the parties or the child resides or is domiciled within the territory of the Saint Regis Mohawk Tribe.
- When a party, whether Indian or non-Indian, and whether natural or created by law, who is found within the territorial jurisdiction of the SRMT Court shall be subject to the jurisdiction of the SRMT Court. Non- Indian persons, by their residence, employment, or by their participation in any other activity within the territorial jurisdiction of the SRMT Court impliedly consent and submit to the provisions of this Act and the jurisdiction of the SRMT Court.
- In the case of enforcement of a foreign child support order issued pursuant to the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. §1738B), when one of the parties is a contract, temporary, or regular employee of the Saint Regis Mohawk Tribe; or employed within the territory of the Saint Regis Mohawk Tribe.
- When a party voluntarily subjects themselves to the jurisdiction by accepting service of a Summons, Petition or Motion or other court mandate to appear in the Saint Regis Mohawk Tribal Court

New:

The Saint Regis Mohawk Tribal Court shall have subject matter jurisdiction over the proceedings and law set forth in this Act.

The Saint Regis Mohawk Tribal Court shall have personal jurisdiction over a party in paternity and child support matters when:

- a party or the child is an enrolled member or eligible to become a member of the Saint Regis Mohawk Tribe;
- a party or the child resides or is domiciled within the territory of the Saint Regis Mohawk Tribe;
- the non-Indian or non-member party has consented to the jurisdiction of the Tribe by:
 - express contractual consent;
 - residing or domiciling within the Tribe's reservation;
 - being employed as a contract, temporary, or regular employee of the Tribe or a tribal business located on the reservation;
 - engaging in consensual relations or a domestic relationship with a tribal member on the reservation;
 - or participating in any other substantial activity within the territorial jurisdiction of the SRMT that impacts the political integrity, the economic security, or the health and welfare of the Tribe and its members.

SUMMONS

This section has been streamlined, in the prior Act there was separate paternity summons and child support establishment summons, there is only one summons section now that applies to both paternity establishment and child support establishment.

SERVICE

This is a new section to the FSA, this was added as the SRMT RCP do not clearly define it, please see below:

- SRMT-CSEU or the complainant is responsible for service of the Petition and Summons and may effectuate such service by the use of a process server, or any person, not a party to the action, who is over the age of eighteen (18) years.
- Both the Petition and Summons shall be served on the respondent by personal service or by certified mail, return receipt requested, unless such service is not possible in which case publication may be used as an alternative method.
- Upon effectuating service by personal service or by certified mail, the person serving the pleadings shall file an Affidavit of Service, indicating that he or she has served the respondent, including the method, date and place of service. The affidavit of service shall comply with the requirements of SRMT's Rules of Civil Procedure §IX. When utilizing certified mail return receipt requested for service, the return receipt shall be proof of service once it is filed with the Clerk of the SRMT Court without the need for an affidavit of service.
- In the event that the respondent cannot be served personally or by certified mail, SRMTCSEU may apply to the Court to effectuate service by publishing the Summons in a newspaper nearest to the

last known location of the respondent for two consecutive publication dates at least 30 days before the initial court appearance or any other court appearance. A copy of the published notice shall be filed with the Clerk of the SRMT Court as proof of service. If the SRMT-CSEU was not the party filing the Summons and Petition, the Clerk of the SRMT Court shall provide a copy of the filed documents to the SRMT-CSEU.

DEFAULT JUDGMENTS

This section has also been streamlined, same as with Summons, new language added:

- A Default Judgment may be reopened upon a showing for good cause which can include, but is not limited to, the respondent not having proper notice, or that the SRMT Tribal Court lacks jurisdiction, or that it is subsequently shown that a party is not the biological parent of the child

MEDIATION

The old FSA referred to mediation as a Mandatory Meeting, after consultation with Johanne and Marsha the following section has been added to the FSA:

- Both parties will participate in mediation with SRMT-CSEU prior to the initial court appearance as provided for in the Act, in an attempt to reach an agreement on the underlying petition without court involvement. The date and location of Mediation shall be provided in the Summons
- During mediation, the SRMT-CSEU shall discuss with both parties the options for settling the matter without litigation. The options for settlement are as follows

For a paternity petition:

- The right to voluntarily acknowledge paternity without genetic testing and without resolving the issue of child support. The SRMT-CSEU shall provide the parties with the acknowledgment form for execution and shall file said acknowledgment with the proper state agency managing the vital records in the state in which the child was born. If the acknowledgment forms not readily available, SRMT-CSEU shall schedule a date and time for the parties to return to execute the acknowledgment. For a child born outside of the United States, the SRMT-CSEU shall provide the parties with the appropriate forms necessary to acknowledge paternity. Such forms shall then be filed with the appropriate agency where the child was born.
- The right to request genetic testing. If testing is requested, then the SRMT-CSEU shall obtain genetic test samples, if possible, on that day. If the parties and child cannot participate in genetic testing that day, then a date and time for the parties to be tested shall be agreed upon.
- The right to acknowledge paternity and settle the child support issue by signing an Agreement that sets forth the terms of the settlement which includes an acknowledgment that the putative father is the biological father based on his statements, and incorporating terms of child support, medical support and fees (if any). Both parties shall sign the Agreement and the Agreement shall be submitted to the Tribal Court with a request that the Agreement be incorporated into a Court order. The parties' signed agreement shall take effect upon signing; or

- The right to deny paternity and request a tribal court hearing. If a hearing is requested, the hearing shall be held on the date and time indicated on the initial Summons served on the party.

For child support:

- The parties can sign an Agreement setting forth the amount of basic child support, child support add-ons like medical expenses and child care expenses, if appropriate, arrears and any other matter related to child support. The SRMT-CSEU shall submit the signed Agreement to Tribal Court to be incorporated into a Court order. The parties' signed agreement shall take effect upon signing.
- When child support is requested in a petition, the SRMT-CSEU shall prepare a Child Support Worksheet for the parties using the guidelines in this Act and the information presented by each party in the Financial Disclosure Form. The Worksheet will provide calculations on the amount of child support that may be requested by the petitioner. All information collected during the mediation shall be kept confidential

Lack of Agreement

- While attendance at mediation is desired and encouraged no party may be penalized for failing to participate. If one party refuses to participate in Mediation, the initial court appearance as set forth in the Summons shall take place.
- If the parties are unable to reach an agreement after mediation, the initial court appearance as set forth in the Summons shall take place.

PATERNITY

Language was added to differentiate paternity establishment when the child is born during a marriage and when it is born out wed lock.

ESTABLISHMENT OF CHILD SUPPORT

Language was added stating that the court shall redact all personal and confidential information such as social security numbers, employee identification numbers...etc. Also, ordering the parties to keep financial information they receive confidential.

ENFORCEMENT OF CHILD SUPPORT ORDERS

Old: *Request the seizure and sale of any non-essential personal property from the Tribal Council*

New: The SRMT-CSEU may take the following enforcement actions by requesting a court order for any or all of the following; that the payor's non-essential personal property be seized and sold to pay off the arrears. Also, all enforcement action now will require a court order.